

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

(Attorney Docket No. 7135USO3)

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| In re the Application of: |) | |
| |) | |
| Raymond P. Silkaitis |) | |
| |) | Group Art Unit: 3626 |
| Serial No.: 10/783,640 |) | |
| |) | Examiner: Sorey, Robert A. |
| Filed: February 20, 2004 |) | |
| |) | Confirmation No.: 7339 |
| For: Medication Management System |) | |
| |) | |

REPLY BRIEF

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I. To Render the Pending Claims Obvious, the Cited Art Must Teach All Limitations

Claims 14-17, 19, and 21-24 were rejected under 35 U.S.C. § 103 as being unpatentable over US Pub. 2002/0038392 (De La Huerga) in view of USP 7,154,397 (Zerhusen). Applicant asserts that the subject matter in the claims as a whole would not have been obvious in view of De La Huerga and Zerhusen.

In the Examiner's Answer, the Office restated a definition of a "web server" from the Microsoft Press Computer Dictionary Third Edition and applied the definition to all prior art processors.

Appellant has not claimed a "web server" but has claimed a processor that "acts as a web server". This is because there is nothing particular about a server that distinguishes it from most clients except for its function. If a processor "acts as" a web server, then it is a web server. And just as Appellant's processor is a web server because it acts as a web server, so is the processor that is described in the prior art.

(Examiner's Answer, p. 13). Applicant respectfully disagrees with this interpretation or characterization of the pending claims. Whether or not the processor of the pending claims is a web server because it acts as a web server has no bearing whatsoever on whether a prior art processor also acts as a web server. Thus, the Office's reasoning that "just as Appellant's processor is a web server because it acts as a web server, so is the processor that is described in the prior art" is incorrect and not factually supported by the cited references. The cited art must describe a processor that functions as the claimed processor to render the present claims obvious. The cited art fails in this respect.

II. The Office's Interpretation of De La Huerga is Incorrect

In the Examiner's answer, the Office stated

De La Hueraga teaches that the processor on the infusion pump is linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices—this is stated explicitly in paragraph 149 as cited. Paragraph 149 of De La Hueraga teaches, “as illustrated in FIG. 17, processor 103 is also linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices”. Indeed, Fig. 17 of De La Hueraga shows this communication channel 255 in communication with controller 260.

(Examiner’s Answer, p. 13). However, Fig. 17 of De La Hueraga in fact does not show the communication channel 255 in communication with controller 260. In contrast, Fig. 17 is an illustration of the pump 100 that includes a housing that houses a pump assembly 108 and an infusion controller 103. (*See* para. 0145). The “controller 260” referred to by the Examiner is illustrated in Fig. 26 and is separate from the pump. The controller 260 communicates with the pumps. (*See* para. 0194).

Thus, in Figure 17 of De La Hueraga, the pump 100 is connected to the channel 255, and in Figure 26, De La Hueraga illustrates that the channel 255 (255a-c) connects the pump 100 to the controller 260. De La Hueraga describes that the communication channel 255 (255a-c) is wired cables (*see* [0195]). In Figure 26, communication channels 255a-c are not the “Internet”. In contrast, the pump 100 is connected to the controller 260, which itself is connected to the network 272. The controller 260, that is separate from the pump, accesses a remote server via network 272 [0224]. De La Hueraga further describes that the controller 260 is linked to pumps 100a, 100b, etc., via a hardwire cable or the like 255 and is also linked via network 272 to a server that archives all standing infusion orders [0243].

Thus, the pump 100 in De La Hueraga does not comprises “a processor that acts as a web server disposed in the pump housing, wherein the processor is configured to communicate with a web browser client device that is remote from the infusion pump”, as in independent claim 14.

Using the Office's meaning and interpretation of "web server" of "*On the internet or other network*, a computer or program that responds to commands from a client ... for example, a file server may contain an archive of data or program files; which a client submits a request for a file, the server transfers a copy of the file to the client" (*Final Office Action*, p. 11), an interpretation of the processor 103 of the pump 100 in De La Huerga as a web server is incorrect because the controller 260 does not retrieve information from the pump 100 over the Internet, but rather retrieves information from the pump 100 over a connecting wired cable. There is no Internet connection or network between the pump 100 and the controller 260 in De La Huerga, and thus, the Office's interpretation of web server cannot be applied to the pump in De La Huerga.

A correct interpretation of De La Huerga is that the pump in De La Huerga that links to a wired communication channel for communication with other devices acts as a client of the other devices (not as a "web server"). A web server is to be distinguished from a web client. One of ordinary skill in the art would readily recognize the distinction including that a web server delivers Internet content (e.g., web pages) to web clients.

Claim 14 distinguishes between a "web server" and a "web browser client device" in that "the processor is configured to communicate with a web browser client device that is remote from the infusion pump". De La Huerga does not describe or contemplate that the pump 100 may perform web server functions for client devices remote from the pump. The pump 100 in De La Huerga that is connected to the wired channel 255 does not deliver Internet content to web clients, and thus, does not equate to a "web server", as recited in claim 14.

In fact, De La Huerga describes a separate conventional web server that provides information to the pump 100. For instance, De La Huerga describes that the pump obtains information via communication channel 255 and "a remote facility server/database" [0151].

Thus, the pump in De La Huerga acts as a client of the remote facility server/database. The Office's interpretation of De La Huerga fails to consider such additional description in De La Huerga.

One of ordinary skill in the art would not consider the pump 100 in De La Huerga as a web server and, in fact, De La Huerga teaches away from the pump acting as a web server.

III. Applicant has applied the Office's Interpretation of "web server" to the Pump in De La Huerga

In the Examiner's Answer, the Office stated that Applicant is relying on features not recited in the claims, i.e., "Internet", to characterize the communication channels in De La Huerga as not the Internet. The Office is incorrect in this reasoning. Applicant has used the Office's interpretation of a "web server" as that of

On the internet or other network, a computer or program that responds to commands from a client ... for example, a file server may contain an archive of data or program files; which a client submits a request for a file, the server transfers a copy of the file to the client

(*Final Office Action*, p. 11), to show that the pump in De La Huerga cannot be considered a web server.

The mere notion that the pump 100 in De La Huerga "may" be capable of performing as a web server is not enough to establish a *prima facie* case of obviousness; rather, De La Huerga must actually describe the pump 100 as acting as a web server.

IV. The combination of De La Huerga and Zerhusen does not describe an infusion pump comprising the claimed "a unitary dual function touch screen display"

The Office stated that Applicant's "configured to" language as used in the claim limitation is broad and the prior art as cited meets the broadly claim limitation. (*See*, claim 14, "a unitary dual function touch screen display located on the pump housing ... wherein the first portion is configured to display a pump information screen and wherein the second portion is configured to concurrently display a web browser screen").

However, the combination of De La Huerga and Zerhusen fails to describe an infusion pump "configured to" operate as recited in claim 14. Like De La Huerga, Zerhusen also does not describe any infusion pump that is configured to display a pump information screen "concurrently display a web browser screen". The general patient/nurse computer in Zerhusen that includes a touch screen display has no pump functionality and cannot be substituted for a pump.

In the Examiner's Answer, the Office cited to a new portion of Zerhusen that describes functionality of a "client device 2006" that is illustrated in Figure 129 that communicates over a network. (Examiner's Answer, p. 18). The client device 2006 is not a pump, as recited in claim 14, and cannot be considered to make up for the deficiencies of De La Huerga.

Thus, contrary to the statements by the Office, in the cited combination, there is still no description of an infusion pump comprising "a unitary dual function touch screen display located on the pump housing", as in claim 14.

In the Examiner's Answer, the Office further stated that the arrangement of the data on the display is a matter of obviousness design choice. (Examiner's Answer, p. 19). Applicant respectfully disagrees that the pending claims simply recite an arrangement of data on a display. In contrast, the pending claims recite a display and functionality of the display (e.g., "configured to display a pump information screen and wherein the second portion is configured to

concurrently display a web browser screen”). The Office has not proven that the combination of the cited references includes “a unitary dual function touch screen display located on the pump housing” that provides the same functionality as that in the pending claims.

V. The combination of De La Huerga and Zerhusen would logically result in something that is altogether different than the invention recited in claim 14

In the Examiner’s Answer, the Office stated that the claims fail to claim simultaneously viewing anything, and instead claim being “configured to” display information. (Examiner’s Answer, p. 21). Applicant respectfully disagrees. Claim 14 recites that the “second portion is configured to concurrently display a web browser screen” with the display pump information displayed on the first portion. Thus, concurrent display functionality would require simultaneous display of data.

Further, while the Office has asserted that the extent of functionality provided by the claim invention is not having to “change computer terminals” resulting in “no unexpected results” (*See* Examiner’s Answer, p. 21), Applicant respectfully disagrees. Applicant notes that further examples of the “extent of functionality provided by the claim invention” are described in the patent application.

Applicant has demonstrated that the rejections of claims 14-17 and 19-24 are in error as a matter of law, and requests withdraw of the rejections and allowance of the pending claims.

Respectfully submitted,

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